United States Attorney
Southern District of New York

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August 7, 2000

Hon. Alvin K. Hellerstein
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. One $20 Gold Coin, 96 Civ. 2527 (AKH)

Dear Judge Hellerstein:

I write to briefly respond to the letter dated August 4, 2000 submitted by claimant enclosing a copy of United States v. Portrait of Wally, 2000 WL 1006255, No. 99 Civ. 9940 (S.D.N.Y. July 19, 2000). While claimant portrays this recent decision as providing "further support" for his position, the ruling has no bearing on the instant case.

First, claimant starts with the operating assumption that the defendant-in-rem coin is the same one that was at one time possessed by King Farouk. This Court has already denied summary judgment on that point, and it is clear from the extensive briefing that claimant's proof on that issue is seriously in doubt.

Second, starting with the incorrect assumption that the defendant-in-rem coin is the so-called King Farouk coin, claimant then misapplies the holding of Portrait of Wally to this case, describing the defendant-in-rem coin as having been "recovered" in the same way that the United States Armed Forces recovered the Schiele painting from Nazi party member Frederic Welz after World War II. Claimant fails to account for the critical distinction between that case and the facts here, namely that there was no "recovery" of the King Farouk coin because the Government officials who had fleeting temporary possession of it did not know it was stolen property. In contrast, in Portrait of Wally, Judge Mukasey found that the United States Armed Forces had

recovered the painting from a Nazi war criminal and had seized it from him for the purpose of returning it to its rightful owner. Portrait of Wally, 2000 WL1006255 at *1 and *5. Portrait of Wally does not hold and cannot be read to imply that goods lose their stolen character when there is a temporary possession of the property by Government employees where the employees were not acting in a "recovery" capacity and were not aware that the property in their possession was stolen because the theft had not yet been discovered.

Finally, as pointed out in greater detail in the Government's Memorandum in Opposition to Summary Judgement at pages through , the common law doctrine discussed in Portrait of Wally has absolutely no application to the Government's superior title claim. In fact, the court's decision in Portrait of Wally is based in large part on the legal distinction between claims of ownership (i.e. that the United States is the legal, title owner of property stolen from it such as the defendant-in-rem coin even over a bona fide purchaser for value) and stealing (i.e. that the defendant-in-rem coin is stolen property and thus forfetiable to the United States as "contraband" under the forfeiture laws). 2000 WL 1006255 at *3. The defendant-in-rem coin is the property of the United States by operation of applicable law of ownership and title, whether or not, it is considered stolen property under the common law doctrine discussed in Portrait of Wally.

Respectfully submitted,

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TOTAL P.03